

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:)		
)		
Thomas J. Reddin, et al.)		
)	Examiner:	Janvier, J.D.
Serial No. 09/296,120)		
)	Group Art Unit:	3688
Filed: April 21, 1999)		
)	Conf. No.	7995
For: METHODS AND SYSTEMS FOR)		
OCCASION BASED LIFESTYLE)		
MARKETING)		

**REPLY TO EXAMINER'S ANSWER & SUBMISSION OF
CORRECTED APPENDIX A**

Mail Stop Appeal Brief - Patent
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: Board of Patent Appeals & Interferences

Dear Sirs:

Pursuant to 37 C.F.R. § 41.41, the Applicant submits this Reply to the Examiner's Answer of
April 14, 2010.

Status of Claims:

Claims 1, 2, 4-19, 21-23, 25-28, 30-45, and 59-66 are pending herein. All pending claims stand rejected. Claims 44 and 45 also have been objected to. Claims 3, 20, 24, 29, 46-58, and 67 have been cancelled. Claim 66 has been withdrawn.

Status of Amendments:

The amendments of January 30, 2009 have been entered.

Grounds of Rejection to be Reviewed on Appeal:

1. Claims 1, 2, 4-19, 21-23, 25-28, 30-45, and 59-65 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,649,114 to Deaton, et al.

2. Claims 1 and 59 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. patent No. 5,974,396 to Anderson, et al.

The rejections under 35 U.S.C. § 101 have been withdrawn.

ARGUMENT

The Applicant was under the impression that the Examiner did not enter the amendments of January 30, 2009. Moreover, the Examiner agreed with the status of the amendments in Section IV herein. Nonetheless, the Applicant is prepared to go forward with the claims as amended, particularly given the resolution of the Section 101 issues. As such, a revised Appendix A concerning the correct claims on appeal is submitted herewith.

With respect to the Examiner's statement that the step of creating demand is no longer stated in Claim 1, the Examiner is correct. Instead of creating demand for an item, the claim now recites determining an association between one or more representative uses of an item by a predetermined type of consumer during one or more representative activities and the selection of messaging, brands, packaging, or merchandising via the processor in communication with the database. As such, an association is created between: (1) the representative uses; (2) the item; (3) the predetermined type of consumer; (4) the representative activities; and (5) the selection of messaging, brands, packaging, or merchandising. The Applicant submits that the association step is more concrete and hence less vulnerable to the limitless construction of the demand step asserted by the examiner.

Moreover, no such five way association is shown in the reference. In fact, the Examiner's argument on this clause establishes this fact. *See Answer at page 6.* Specifically, the Examiner argues that Deaton shows providing coupons at the point-of-sale based upon a consumer's "purchase cycle or consumption rate" of an item such as coffee. *See Deaton at col. 120, lines 1-11.* Alternatively, if a consumer does not buy a particular item such as coffee, the system also may offer the consumer a coupon. *Answer at page 7; Deaton at col. 68, lines 44-63.*

In the first example, Deaton may describe a consumer and an item such as coffee but clearly Deaton does not show both a use and an activity. Rather, the Examiner apparently takes the position that the act of buying the coffee reads on both the use and the activity limitations. Specifically, while the uses are described as a consumption rate while messaging is described as the coupons, no representative activity is described parenthetically or otherwise:

Determining an association between one or more representative uses (consumption rate) of said item (e.g. coffee) by said predetermined type of consumer during said one or more representative activities **and** the selection of messaging (coupon), brands, packaging or merchandising **by the processor in communication with the database**, using the consumer's buying pattern (market data and/or lifestyle data) corresponding to the item or product or by tracking the customer's or consumer's purchase cycle **or consumption rate** of the product to anticipate when the customer may run out of the product....

Answer at 6. (Emphasis in the original.)

Under no interpretation of the reference are both uses and activities described in the context of a consumer and messaging. Moreover, no attempt is made to describe such in the rejection. As such, the Applicant asserts that the limitations herein are clearly distinct from the "consumption analysis module" described in the reference.

Likewise with respect to the second example concerning the non-use of coffee, the Applicant submits that the non-use is the exact opposite of either the use or the activity limitations described herein. The Applicant thus submits that independent Claim 1, and the dependent claims thereon, are clearly patentable over the cited reference.

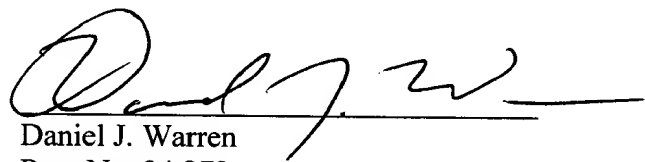
With respect to independent Claim 59, the same relationship concerning the consumer, the item, the use, the activities, and the messaging is stated. Moreover, the step of increasing demand also is specifically recited. The Applicant thus submits that independent claim 59, and the dependent claims thereon, are patentable over the cited reference.

With respect to the rejection of Claims 1 and 59 under Anderson, no argument is made that the reference shows any type of association between uses of an item by a consumer, representative activities, and the selection of messaging. As with Deaton, Anderson is largely focused on scanner data so as to determine and maximize store buying patterns. The Applicant thus submits that independent Claims 1 and 59, and the dependent claims thereon, are patentable over the cited references.

CONCLUSION

The Applicant respectfully requests that the Board overturn the rejections of the claims. Any questions may be directed to the undersigned at 404.853.8028.

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Appendix A –Claims on Appeal

1. A method for promoting the selection of an item by a predetermined type of consumer based upon consumer lifestyle and consumer market data, said method comprising the steps of:

storing the consumer lifestyle and the consumer market data in a database;

storing a selection of messaging, brands, packaging, or merchandising associated with the item in the database;

determining one or more representative activities of said predetermined type of consumer based upon the consumer lifestyle data via a processor in communication with the database;

determining one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities based upon the consumer market data via the processor in communication with the database;

determining an association between said one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities ~~through~~ and the selection of messaging, brands, packaging, or merchandising via the processor in communication with the database;

storing the association in the database; and

providing access to the database and the association.

2. The method of promoting the selection of an item of claim 1, wherein said step of determining one or more representative activities of said predetermined type of consumer comprises analysis of said one or more representative activities within a predetermined length of time.

3. (Cancelled)

4. The method of promoting the selection of an item of claim 1, wherein said step of determining one or more representative activities of said predetermined type of consumer comprises analysis of the consumer lifestyle data.

5. The method of promoting the selection of an item of claim 1, wherein said predetermined type of consumer comprises a home category manager and wherein said one or more representative activities is an event selected from the group consisting of wake up, breakfast, in transit to work, in transit to school, morning break, lunch, afternoon break, after school snack, after school sports, after work workout, dinner, social events, evening snack, and shopping.

6. The method of promoting the selection of an item of claim 5, wherein said item comprises a beverage and wherein said one or more representative uses is a need selected from the group consisting of refreshment, lift, meal enhancer, socializer, re-hydration, relaxer, treat, and a tide-me-over.

7. The method of promoting the selection of an item of claim 6, wherein the selection of messaging comprises messaging directed to said home category manager suggesting use of said beverage as said meal enhancer with said dinner.

8. The method of promoting the selection of an item of claim 6, wherein the selection of messaging comprises messaging directed to said home category manager suggesting use of said beverage as said refreshment during said shopping.

9. The method of promoting the selection of an item of claim 1, wherein said predetermined type of consumer comprises blue-collar adults and teens and wherein said one or more representative activities is an event selected from the group consisting of after school, afternoon, and after work.

10. The method of promoting the selection of an item of claim 9, wherein said item comprises a beverage and wherein said one or more representative uses is a need selected from the group consisting of refreshment, energy, and a tide-me-over.

11. The method of promoting the selection of an item of claim 10, wherein the selection of messaging comprises messaging directed to said blue-collar adults and teens suggesting use of said beverage as said energizer during said afternoon.

12. The method of promoting the selection of an item of claim 1, wherein said consumer market data comprises consumer purchase information.

13. The method of promoting the selection of an item of claim 12, wherein said step of determining one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities comprises analysis of said consumer purchase information.

14. The method of promoting the selection of an item of consumer of claim 1, wherein the selection of messaging comprises messaging promoting said item as addressing a need associated with said one or more representative uses.

15. The method of promoting the selection of an item of consumer of claim 1, wherein the selection of messaging comprises messaging associating said item with said one or more representative activities.

16. The method of promoting the selection of an item of claim 1, wherein the selection of brands comprises selection of one or more brands of said item.

17. The method of promoting the selection of an item of claim 16, wherein said one or more brands comprise predetermined beverage brands.

18. The method of promoting the selection of an item of claim 16, wherein said one or more brands of said item is a liquid selected from the group consisting of coffee; tea; water; fruit, vegetable and juice concentrates; fruit, vegetable and juice beverages; isotonic beverages; non-isotonic beverages; milk and milk byproducts; carbonated soft drinks; and soft drink concentrate.

19. The method of promoting the selection of an item of claim 16, wherein the selection of one or more brands comprises selection of one or more food and beverage brands.

20. (Cancelled)

21. The method of promoting the selection of an item of claim 1, wherein the selection of packaging comprises selection of a predetermined package.

22. The method of promoting the selection of an item of claim 1, wherein said packaging comprises immediate consumption packaging.

23. The method of promoting the selection of an item of claim 1, wherein said packaging comprises future consumption packaging.

24. (Cancelled)

25. The method of promoting the selection of an item of claim 1, wherein said merchandising comprises bundling the location of said item with a different item.

26. The method of promoting the selection of an item of claim 25, further comprising messaging promoting said bundling of said item with said different item.

27. The method of promoting the selection of an item of claim 1, wherein said merchandising comprises bundling the offering of said item with a different item.

28. The method of promoting the selection of an item of claim 27, further comprising messaging promoting said bundling of said item with said different item.

29. (Cancelled)

30. The method of promoting the selection of an item of claim 1, wherein said messaging comprises media advertising.

31. The method of promoting the selection of an item of claim 30, wherein said messaging is advertising selected from the group consisting of print; radio, television, satellite and cable broadcasting; Internet, e-mail, and computer transmissions; telecommunications; event-based marketing; and direct mail.

32. The method of promoting the selection of an item of claim 1, wherein said messaging comprises in-store displays.

33. The method of promoting the selection of an item of claim 1, wherein said messaging comprises out-doors displays.

34. The method of promoting the selection of an item of claim 1, wherein said messaging comprises the name of said item and said one or more representative uses.

35. The method of promoting the selection of an item of claims 1, wherein said messaging comprises the name of said item and said one or more representative activities.

36. The method of promoting the selection of an item of claim 1, further comprising the step of determining an environment in which said item is offered.

37. The method of promoting the selection of an item of claim 36, wherein said environment comprises a retail environment.

38. The method of promoting the selection of an item of claim 36, wherein said environment comprises a virtual environment.

39. The method of promoting the selection of an item of claim 36, further comprising the step of determining the manner in which said predetermined type of consumer selects said item in said environment.

40. The method of promoting the selection of an item of claim 39, wherein said step of determining the manner in which said predetermined type of consumer selects said item in said environment comprises consumer intercept surveys.

41. The method of promoting the selection of an item of claim 39, wherein said step of determining the manner in which said predetermined type of consumer selects said item in said environment comprises analysis of transactional data.

42. The method of promoting the selection of an item of claim 39, wherein said manner in which said predetermined type of consumer selects said item comprises a purchasing trip selected from the group consisting of quick mission trips, quick meal solution trips, and stock-up trips.

43. The method of promoting the selection of an item of claim 39, wherein the selection of messaging comprises displays located at a location distant from said environment.

44. A computer-readable medium having computer-executable instructions for performing the steps recited in claim 1.

45. A computer-readable medium having computer-executable instructions for performing the steps recited in claim 39.

46. - 58. (Cancelled)

59. A method for promoting the use of an item by a predetermined type of consumer, said method comprising the steps of:

receiving consumer lifestyle data corresponding to representative activities of said predetermined type of consumer;

storing said data corresponding to said representative activities of said predetermined type of consumer in a marketing database;

receiving consumer market data corresponding to representative uses of said item by said predetermined type of consumer;

storing said data corresponding to said representative uses of said item by said predetermined type of consumer in said marketing database;

receiving a selection of messaging, brands, packaging, or merchandising associated with the item;

storing the selection of messaging, brands, packaging, or merchandising associated with the item in said marketing database;

determining a relationship between said data corresponding to said representative activities of said predetermined type of consumer and said data corresponding to said representative uses of said item by said predetermined type of consumer activities ~~based upon~~ with the selection of messaging, brands, packaging, or merchandising via a processor in communication with the marketing database so as to increase demand of the item by the predetermined type of consumer; and

storing said relationship in said marketing database.

60. The method for promoting the use of an item of claim 59, further comprising the step of creating messaging associating said item with said relationship.

61. The method for promoting the use of an item of claim 60, further comprising the step of storing said messaging in said marketing database.

62. The method for promoting the use of an item of claim 61, further comprising the steps of receiving data corresponding to a conversion rate of said predetermined types of consumers in response to said messaging associating said item with said relationship and storing said data corresponding to said conversion rate of said predetermined types of consumers in said marketing database.

63. The method for promoting the use of an item of claim 62, further comprising the steps of receiving data corresponding to the average transaction amount for said item and storing said data corresponding to said transaction amount in said marketing database.

64. The method for promoting the use of an item of claim 63, further comprising the steps of receiving data corresponding to the average gross profit margin for said item and storing said data corresponding to said average gross profit for said item in said database.

65. The method for promoting the use of an item of claim 64, further comprising the step of determining the value of said messaging via said processor based upon said conversion rate, said average transaction amount for said item, and said average gross profit margin for said item.

66. (Withdrawn)

67. (Cancelled)